

Message Text

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PAGE 01 STATE 255966
ORIGIN L-03

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DRAFTED BY L/M - I. INGALLS
APPROVED BY L/M - K. E. MALMBORG

JUSTICE-RISTAU(FOREIGN LITIGATION)
-----017647 261744Z /70

O 261450Z OCT 77
FM SECSTATE WASHDC
TO AMCONSUL DURBAN IMMEDIATE
INFO AMEMBASSY GABORONE IMMEDIATE
AMEMBASSY PRETORIA

UNCLAS STATE 255966

E.O. 11652: N.A.

TAGS:

SUBJECT: USG CLAIM AGAINST SOUTH AFRICAN RAILWAYS AND
HARBOURS DEPARTMENT

1. DEPARTMENT OF JUSTICE UNDERSTANDING OF UNDERLYING FACTS
AS FOLLOWS: IN NOVEMBER 1976 USG PURCHASED FROM GROSVENOR
INDUSTRIAL ENGINES, LTD., TWO "CASE DIESEL GENERATOR SETS"
WORTH APPROXIMATELY \$12,000 EACH. ONE GENERATOR WAS TO BE
SHIPPED TO EMBASSY GABORONE AND THE OTHER TO EMBASSY MBABANE.
BOTH GENERATORS WERE TO BE SHIPPED ABOARD "AFRICAN SUN."
SUBSEQUENTLY, JOHN T. RENNIE & SONS, LTD., AGENTS FOR "AFRI-
CAN SUN," PASSED TRANSSHIPMENT ORDER TO SOUTH AFRICAN RAIL-
WAYS AND HARBOURS DEPARTMENT DIRECTING SWAZILAND GENERATOR
BE SHIPPED ABOARD "INDODA." S.A.R.&H. ERRONEOUSLY HAD
BOTSWANA GENERATOR LOADED ON "INDODA." ABOUT NOVEMBER 30,
1976, "INDODA" SANK IN DURBAN HARBOUR AFTER COLLISION WITH
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 255966

URUGUAYAN GOVERNMENT-OWNED VESSEL "PRESIDENTE ORIBE." COL-
LISION APPARENTLY RESULT OF S.A.R.&H'S NEGLIGENCE IN GIVING
"INDODA" CLEARANCE TO ENTER SHIP CHANNEL WHEN "PRESIDENTE
ORIBE" WAS ALREADY PROCEEDING DOWN CHANNEL IN OPPOSITE
DIRECTION. ASSUME SWAZILAND GENERATOR NOW REACHED PROPER
DESTINATION. REQUEST CONGEN CONFIRM THAT JUSTICE UNDERSTAND-
ING OF FACTS CORRECT.

2. JUSTICE APPROVES RETENTION OF SHEPSTONE & WYLIE.
- 3, ORIGINAL POWER OF ATTORNEY WILL BE POUCHED AS SOON AS AUTHENTICATED. PRESUME SOUTH AFRICAN COURTS WILL ACCEPT CABLED TEXT IN THE MEANTIME.

BEGIN TEXT. POWER OF ATTORNEY AND APPOINTMENT OF COUNSEL
KNOW ALL MEN BY THESE PRESENTS: THAT THE UNITED STATES OF
AMERICA, ACTING THROUGH ITS DULY AUTHORIZED REPRESENTATIVE,
BARBARA ALLEN BABCOCK, ASSISTANT ATTORNEY GENERAL, UNITED
STATES DEPARTMENT OF JUSTICE, HEREBY CONSTITUTES AND APPOIN-
TS THE FIRM OF SHEPSTONE & WYLIE AND THE INDIVIDUAL PART-
NERS THEREOF WITH POWERS OF SUBSTITUTION AS ITS LAWFUL
ATTORNEY IN FACT FOR THE PURPOSE OF REPRESENTING THE INTER-
ESTS OF THE UNITED STATES OF AMERICA IN OBTAINING FROM THE
RESPONSIBLE PARTY OR PARTIES COMPENSATION AND TO INSTITUTE
LEGAL PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION FOR
DAMAGES TO A DIESEL GENERATOR AS THE RESULT OF THE SINKING
OF THE VESSEL "INDODA" IN DURBAN HARBOUR ON NOVEMBER 30,
1976.

THAT FOR THAT PURPOSE THE UNITED STATES OF AMERICA ELECTS
ITS DOMICILE AT THE RESIDENCE OF ITS AFORESAID ATTORNEY IN
FACT, AT SCOTSWOOD HOUSE, 41 ACUTT STREET, DURBAN, SOUTH
AFRICA 4001, AND

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UNCLASSIFIED

PAGE 03 STATE 255966

THE UNITED STATES OF AMERICA FURTHERMORE GRANTS AND
GIVES TO THE SAID ATTORNEY IN FACT FULL AUTHORITY AND POWER
TO AND PERFORM ANY AND ALL ACTS NECESSARY OR INCIDENT TO
THE PERFORMANCE AND EXECUTION OF THE POWER HEREIN EXPRESSLY
GRANTED, AS FULLY TO ALL INTENTS AND PURPOSES AS THE UNITED
STATES OF AMERICA MIGHT DO IF PERSONALLY PRESENT.

DONE AT WASHINGTON, DISTRICT OF COLUMBIA, THIS 12TH DAY OF
OCTOBER, 1977.

SIGNED: BARBARA ALLEN BABCOCK, ASSISTANT ATTORNEY GENERAL.
END TEXT OF POWER OF ATTORNEY

4. REQUEST CONGEN ADVISE SHEPSTONE & WYLIE THEY WILL BE
WORKING UNDER INSTRUCTIONS OF DEPARTMENT OF JUSTICE; THEY
SHOULD REPORT TO JUSTICE, EITHER DIRECTLY OR THROUGH CONGEN
ALL DEVELOPMENTS; THEY SHOULD CONSULT JUSTICE ON ALL MAJOR
DECISIONS; THEY SHOULD PROMPTLY FURNISH JUSTICE COPIES OF
PLEADINGS, ORDERS, CORRESPONDENCE AND OTHER RELEVANT DOCU-
MENTATION; THEY ARE NOT AUTHORIZED TO SETTLE OR COMPROMISE
USG CLAIM WITHOUT SPECIFIC AUTHORIZATION FROM JUSTICE. NO
APPEAL SHOULD BE FILED FROM AN ADVERSE JUDGMENT OR ORDER

RENDERED BY SOUTH AFRICAN COURT WITHOUT EXPRESS PRIOR APPRO-
VAL OF JUSTICE. VANCE

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Disposition Approved on Date:
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